

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SBC Pacific
Bell Telephone Company (U 1001 C), a
corporation, for Authority to Categorize Local
DA Service as a Category III Service.

Application 02-07-050
(Filed July 31, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
CLARIFYING STATUS OF PROCEEDING IN RESPONSE
TO SBC'S MOTION TO WITHDRAW APPLICATION**

On December 2, 2003, SBC California (SBC) filed a "Motion to Withdraw Application" in this docket. Subsequently, the Commission accepted for filing a joint response from The Office of Ratepayer Advocates (ORA), The Utility Reform Network and Greenlining Institute. The joint response argues that the Commission either should impose five specified conditions on any decision approving the requested withdrawal or deny the request and move ahead with the proceeding under a revised schedule. The joint response also alleges that SBC has refused to submit to discovery requests.¹

This ruling clarifies the status of this proceeding, pending the Commission's consideration of SBC's motion to withdraw its application.

¹ In addition, SBC stated in a November 25, 2003 letter to the Commission that it had taken no steps to notify its customers of public participation hearings scheduled in this proceeding. Prior to the filing of SBC's motion, the administrative law judge assigned to this proceeding had directed SBC to proceed to publish and mail such customer notices for hearings scheduled to begin in February 2004.

The schedule in this proceeding is suspended. The Commission will remove from its calendar currently scheduled evidentiary and public participation hearings and parties need not submit testimony. However, this proceeding remains open until and unless the Commission determines otherwise.

No party may unilaterally assume the status of a proceeding has changed simply because they have filed a motion requesting a change. This is especially true where, as here, the motion is contested. Accordingly, to the extent SBC did not honor discovery requests prior to this ruling, it acted improperly.² Nevertheless, discovery will be suspended until the Commission has addressed SBC's motion.³

SBC's contested motion for withdrawal requires the deliberation and decision of a Commission order. In the interim, all parties must comply with all relevant rulings and directives of the administrative law judge (ALJ) and assigned Commissioner. Except for the suspension of the schedule, all Commission rules and orders that are relevant to the management of and conduct of parties in an open proceeding continue to apply pending consideration of the motion.

² Likewise, SBC should have at least consulted the assigned ALJ prior to deciding that it would not send out bill inserts notifying customers of the scheduled public participation hearings.

³ Of course, the suspension of discovery does not alter ORA's general rights to obtain information, consistent with Public Utilities Code Section 309.5(e) and D.01-08-062.

IT IS RULED that:

1. The schedule in this proceeding is suspended while the Commission considers the motion of SBC California (SBC) to withdraw its application.
2. Discovery is suspended pending consideration of SBC's motion to withdraw its application.
3. All Commission rules and orders that are relevant to the management and conduct of an open proceeding shall continue to apply.

Dated December 9, 2003, at San Francisco, California.

/s/ KIM MALCOLM

Kim Malcolm
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Clarifying Status of Proceeding in Response to SBC's Motion to Withdraw Application on all parties of record in this proceeding or their attorneys of record.

Dated December 9, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.